[XXXVth YEAR.] THE [No. 1726.]

MARYLAND GAZETTE.

FRIDAY, FEBRUARY 11, 1780.

r the MARYLAND GAZETTE.

NUMBER XXVII.

OWING to many cauſes, England had been hitherto ſo much taken up with the affairs of Europe, that her ambition had not begun to extend itſelf with regard to the limits of her ſeſſions in North America. But after the ace of Aix la Chapelle, this became her object, d ſhe was daily making encroachments on the ritories of France in this quarter. It is dif- ult for us, who have taken all our ideas from repreſentations of Bri in, to be perſuaded this encroachment. Like the feudatories of a eat chieftain, we have never examined the rcumſtances of the inroad, but explicitly ad- itted the juſtice of the claim, and have drawn r ſwords to defend it. It is difficult, more pecially, as we ourſelves were intereſted in the atter, and whatever extent of territory was ken away from France, was added to our ſet- ments. Nevertheleſs, though I do not mean enter minutely into the diſcuſſion of this af- r, yet it will eaſily appear, that our former as of ambition on the part of France, ariſing om the diſputes relative to her poſſeſſions on is continent, were very ill founded. At the nclusion of the peace of Aix la Chapelle, Eng- nd had a flouriſhing marine, and could give ws almoſt to the whole commercial world. om what we know of the nature of individuals, d of nations, it is more reaſonable to ſuppoſe, at in this caſe England would be ambitious, an that France ſhould be ſo, whoſe naval force s almoſt totally deſtroyed, and in the year 41, had ſcarce one ſhip of force remaining. Be is as it will, we may now ſpeak of theſe things ely, as we are no longer connected with that nd, and as they never can be the ground of debate between France and us.

It was no eaſy matter to ſettle clearly and ciſely the boundaries of the poſſeſſions of the o crowns on this continent, the antient trea- s relative to theſe, being obſcure or rather intelligible. At the treaty of Aix la Chapelle was regulated, that all things ſhould be on the oting they were, or *ought to be*, before the war. heſe indefinite words, as we have remarked in former paper, left it with either party to make eir own conſtruction of the boundaries; and nce it was, that the Engliſh, from the ſettle- ents bordering on what is called Nova Scotia, d what was then called, and ſtill retains the me of Canada, were making daily encroach- ents on the French ſettlements; for though is was not as things were, yet it was *as they ght to be*, before the war.

The court of France made her firſt complaints England in the month of June, 1749; and to t a ſtop to the daily hoſtilities, which might ght up a new war, propoſed to name commiſſi- ners, who might ſettle in an amicable manner, e limits of the Engliſh and French colonies. he king of Great-Britain, then George II, med commiſſioners to meet for that purpoſe, ommiſſioners at Paris, but hoſtilities between e ſettlements on the river St. John, and other aces, continuing daily in America, it an- wered little purpoſe for the king of England to der ſimply that his ſubjects of theſe colonies ould not invade the poſſeſſions of the French habitants, either on the ſide of New Scotland, Hudſon's bay; for as no boundary was pre- ſely fixed, and as the Britiſh colonies were ore powerful than thoſe of France, they uſed rce to obtain that which they had claimed, d which had not been willingly relinquiſhed to em.

France, as ſhe was not prepared for war, made e of every means to preſerve peace. Orders re given at different times to the marquis de Jonquiere, governor of Canada, "to refrain m the leaſt encroachment on the rights of the gliſh; to conduct himſe f, with regard to em, with all that attention to peace, which uld be compatible with the honour of the na- n, and the preſervation of its poſſeſſions; to join the officers which he might detach to the ſts in the neighbourhood of the Engliſh colo- s, to conduct themſelves on the ſame princi- s; and in one word, to avoid every thing ich could give the leaſt foundation to com- aints againſt them."

September 21, 1750, the commiſſioners preſented their memorials to their reſpective courts, concerning the limits of Nova Scotia, in which they differed widely from each other, the French making the *antient limits* to commence from the extremity of Francis bay, to cape Santa Maria, along the coaſt, and ending at Cape Canſeau; the Engliſh contending, that under the deſcription of the *antient limits*, were contained all the lands which extend from the river Kennebec to the mouth of the river St. Lawrence, and from the river St. Lawrence, to the north as far as the Ocean. January 11, 1751, the Britiſh commiſſioners ſent in a memorial to prove the juſtice of their demands. The French commiſſioners replied to this, and it muſt be confeſſed, refuted what their adverſaries had conſidered as demonſtration. Indeed it was eaſy to prove that the reaſonings of both were uncertain, and the great fault was, that ſuppoſing this, they reſpectively did not enter into a treaty, with a diſpoſition mutually to concede, and ſo adjuſt the difference. What end did it ſerve to run back to the origin of the French and Britiſh eſtabliſhments in America, to cite the authorities of navigators, hiſtorians, writings, maps, patents given by both courts, commiſſions to their officers, and the letters of thoſe officers. This labour might diſcover great knowledge, but left no end to the controverſy.

When we read in the 18th article of the treaty of Utrecht, that the king of France cedes to England, Nova Scotia heretofore called Acadia, in its whole extent, according to the *antient limits*, we muſt acknowledge, in good honeſty, that theſe words determine nothing, for how could there be *antient limits* in a country which had been inhabited only by ſavages before the Europeans had fixed themſelves in it. From the manner in which the Europeans fixed themſelves in provinces, of which they knew not the extent, and where they really did poſſeſs only the lands which they cultivated, how could they have certain limits? They extended themſelves by little and little; they built forts, and the countries comprehended between their territories were ſubject to the ſame juriſdiction. On one and on the other ſide, they had but reaſonable expectations of the final poſſeſſion. The government one while more, another while leſs extended, had no conſtant and determinate territory; the ſeparate colonies united, the united colonies became ſeparate, and in the midſt of theſe continual revolutions, how could there be found certain traces of certain limits? England had, by this time, ſent an army under the command of general Braddock, to attack the French on the Ohio, when the miniſter of France made a farther propoſition, January 13, 1755, to place matters on the footing they had been, until commiſſioners could be appointed to ſettle them in ſome prompt and immediate manner. A negotiation in conſequence of this commenced, and France conſented "to evacuate all the lands ſituate between the weſtern mountains and the Ohio river, ſo that this extent ſhould be conſidered as a neutral country, until by the convention ſet on foot, it ſhould be ſettled to whom it ſhould belong." Theſe propoſitions of the French court would very probably have produced a ſalutary effect, if they had been ſent four years ſooner; but the Britiſh court was now weary of negotiations; every diſpoſition had been made for war, and her expectations were too high, eaſily to renounce them. In anſwer to this propoſal of a treaty, the court of England ſent, May 5, 1755, a number of articles, by which it was demanded, amongſt other things, that France ſhould demoliſh her fortifications on the borders of Canada: a boundary line of her poſſeſſions was, at the ſame time, pointed out, by ſuch lines, and ſuch degrees of latitude, as would greatly circumſcribe her within her former claims.

This was in fact to reject the propoſal of a treaty; nevertheleſs France ſtill continued to make advances towards an accommodation, and in a memorial from her miniſter ſhe wiſely obſerved, "That if thoughts of war ſhould continue in America, or ſhould hoſtilities continue upon the ſea, advantages on either ſide would ſerve only to multiply pretenſions, and furniſh new obſtacles to an accommodation;" adding, that ſincerely to deſire peace, and not to uſe every means to prevent war, were things incompatible.

The court of England was, no doubt, convinced of this, but anſwered, "That ſhe could not conſider an armiſtice as a means that could favour a reconciliation. Nevertheleſs a negotiation was continued, becauſe the French court, conſcious of her own weak ſtate, could not give up the hopes of peace, and England had ſome reaſons not yet to declare war.

In a memorial which the ambaſſador of France preſented to the court of London, May 14, 1755, it was propoſed, for a baſis of negotiation, "That Nova Scotia, though it comprehended but a part of the peninſula on which it was ſituated, yet from a love of peace, France would yield the whole peninſula to England, on condition that the French who are there ſettled, ſhould enjoy, for three years, the liberty of retiring with their effects. This ceſſion ſhe would make, reſerving only the iſthmus, which ſhe could not, without renouncing at the ſame time the communication, during a great part of the year, to ſeveral of her weſtern poſſeſſions."

In anſwer to this, the court of London renewed her propoſitions of March 7, and obſerved, "That the conditions on which the court of Verſailles conſented to abandon the peninſula, were ſubject to many obſtacles, and unſurmountable objections, ſo as to render the poſſeſſion of it uſeleſs, and that it would be as well for England not to poſſeſs it at all, as not to poſſeſs what was the principal part." The court of London remitted a farther memorial, with ſome queſtions relative to a negotiation, but in the mean time had given orders to admiral Boſcawen to commence hoſtilities, and June 8, 1755, the Alcides and Lys, two French veſſels, were captured in the ſeas of America.

It is needleſs to ſay in what manner the war in America kindled up a war in Europe. It was becauſe, while France was vulnerable to Britain, on this continent, the poſſeſſions of Britain, were vulnerable to France, in Germany.

I have drawn out theſe particulars to ſome length, becauſe I well know, that though our prejudices againſt the French nation came principally from the iſland of Great-Britain, yet they were conſiderably rivetted by our conteſts on this continent. For it is natural for all men to think their own cauſe juſt, and I have rarely met one who has been able to acknowledge the good qualities of his adverſary. But as we eaſily admit, that many of thoſe things which were done by us long ago were not juſtifiable, ſo with regard to our conduct to the French nation, while they were our neighbours on the continent, we now cenſure or approve freely: and I believe when we come to conſider the matter at a future day, we ſhall be ſenſible that though France yielded to the ſuperior fortune, and ſuperior force of the Britiſh arms, yet ſhe was even in the commencement of the debate the injured party, and we who were formerly the Britiſh colonies acting offenſively againſt her, obeyed rather the impulſe of the Britiſh counſels, than any ſound deductions of reaſoning relative to the ground of the quarrel. Be this as it may, Providence has made that brave nation our beſt friends, and if at any time we have concurred in treating them hardly, our beſt reparation will be a ſteady adherence to this alliance, with which we are ſo much honoured, and, in which we are ſo happy.

THE HONEST POLITICIAN.

To the PUBLIC.

THE intended confiſcation of Britiſh property has occaſioned a difference of opinion between the two branches of our legiſlature. A bill for ſeizing and confiſcating that property, originated in the houſe of delegates, was ſent to, and returned by the ſenate, with a negative, accompanied by a meſſage, explaining the reaſons of their rejecting it, at the laſt ſeſſion. The delegates anſwered the ſenate's meſſage, a few hours before the two houſes adjourned: the ſenate being thus precluded from replying, and the delegates having appealed to their conſtituents for their inſtructions on this point,

it may not be improper for an individual to hazard an inveſtigation of, and to attempt to throw ſuch lights upon, the ſubject, as may enable his fellow-citizens to form a right judgment of the controverſy. In this free government every freeman has a right to expreſs his ſentiments publicly, on public matters, the conduct, and proceedings of our legiſlature. Without farther preface or apology, therefore, I ſhall proceed to examine the reaſons adduced in the meſſages of the delegates to the ſenate, vindicating the juſtice and policy of confiſcating Britiſh property. Their laſt meſſage is introduced by the remark, that in the diſcuſſion of moſt ſubjects the diſputants frequently mix extraneous matter, in order to draw off the attention of, and bewilder the reader; and then aſſerts, there are only two points in diſpute between the two houſes.

Firſt; Whether the ſeizure and confiſcation of all Britiſh property (debts only excepted) belonging to Britiſh ſubjects in this ſtate, is ſupported and juſtified by the law of nature and nations.

Secondly; Whether policy requires or forbids the exercife of the right of ſeizure at this time.

Although the meſſage aſſerts, that the deſcription of Britiſh ſubjects in the bill, the line drawn to aſcertain them, whether perſons are included who ought not, and the mode of obtaining or diſpoſing of that property, are points foreign to, and which ought not to be blended with, the above queſtions; I beg leave to differ from this opinion of the delegates. Theſe ſeveral matters are ſo intimately connected with, and ariſe ſo naturally out of the ſubject, that the latter cannot well be developed and underſtood, unleſs the former are diſcuſſed; the juſtice and policy of the meaſure depending on the knowledge of the true objects of the one, and the probable conſequences of the other. For ſurely the ſeizure and confiſcation of Britiſh property is not a mere ſpeculative and metaphyſical queſtion, on which our legiſlators are, like ſchool divines, to exerciſe a ſubtle ingenuity, for the amuſement of the curious, and idle; their duty I apprehend to be very different; they ſhould conſider, not only whether by the *utmoſt rigour* of the law of nations Britiſh property may be juſtly confiſcated, but alſo, whether the confiſcation would be conſiſtent with true policy, and the preſent practice of the civilized nations of Europe; and whether it be practicable to draw a line, upon the principles of the rejected bill, for diſcriminating *Britiſh* ſubjects from our *own*, without violating our bill of rights, and the perverſion of law. The juſtice of the meaſure, depending on the proper objects of it, the latter muſt firſt be known and aſcertained, before we can with propriety determine on the former: the policy of it cannot well be appreciated, and judged of definitively, until the moſt material conſequences, which might probably reſult from the confiſcation of Britiſh property, ſhall be traced out, and expoſed to the public view; if in the courſe of ſuch an inveſtigation, it ſhould be evinced, that *every bill*, framed upon the principles of the one, rejected by the ſenate, would be incompatible with the letter and ſpirit of our conſtitution, could a more forcible reaſon for the future rejection of any *ſimilar bill* be given? Certainly not; as every law repugnant to our bill of rights, it is conceived, is null and void. Beſides the objection from the nullity of ſuch a law, there ariſes another, from the danger of the precedent; 'tis a thing of ill example and dangerous conſequence for the legiſlature to break a new law, more eſpecially a new form of government. Machiavel, in the 45th chapter of his firſt book of diſcourſes on Livy, has the following pertinent remark:

"The commotions about the tyranny of the Decemviri being compoſed, and Rome reſtored to its old form of government again, Virginius cited Appius before the people, to anſwer what he had attempted upon his daughter. Appius appeared with his nobility about him; Virginius commanded him to priſon: Appius cried out, he appealed to the people: Virginius replied, that he who had taken away thoſe appeals from the people, ought not to have any benefit by them, nor be permitted to implore *their* protection, whoſe laws and liberties could receive no protection from him. Appius inſiſted, that they ought not to violate a thing, which they had urged with that eagerneſs, and ordained with that zeal. And though indeed the life of Appius was wicked enough, and *there was no puniſhment*, that he did not deſerve, yet it was inhoſpitable, *and contrary to all civil ſociety, to violate their own laws, which were but newly made, and paſſed with ſo much importunity*: for, in my judgment, there is nothing ſo indecorous, nor of ſo ill example in a commonwealth, *as the infraction of a new law by the legiſlator himſelf.*" The application is obvious; the quotation needs no comment.

The juſtice of confiſcating the property of Britiſh ſubjects, *as aliens*, cannot, as I have ſaid, be determined on, till it be aſcertained, upon principles of law, who are Britiſh ſubjects, and whether *all* Britiſh ſubjects are *aliens* in this ſtate; for upon the ſuppoſition that *all Britiſh ſubjects* are *aliens*, and at this time alien enemies, of courſe incapable of holding any property in this ſtate, the delegates contend it is juſt and lawful to confiſcate the property of *all ſuch*: Can theſe Britiſh ſubjects, *ſuppoſed aliens*, be aſcertained by the law of nations? If ſo, what neceſſity is there for a poſitive law to aſcertain them? If the former law lays down no criterion, by which, in revolutions ſimilar to the preſent, the ſubjects of the new are diſtinguiſhable from thoſe of the old government, we ſhould have recourſe to our common or municipal law to find them out; for before we can aſcertain what is *private* Britiſh and *alien* property, we muſt firſt aſcertain *what Britiſh ſubjects are aliens in this country*. The delegates wrongly concluding, that *all Britiſh* ſubjects are aliens, and chuſing, as the conciſeſt method, to declare by a poſitive law, who ſhall be deemed *Britiſh* ſubjects, and *aliens*, rather than leave that point to be decided by our courts of law, upon legal grounds, originated, and ſent a bill to the ſenate, for that purpoſe. That the bill included in the number of Britiſh, ſeveral, whom the ſubſiſting laws of this ſtate conſider as its own ſubjects, and that it would have ſtript them of their property, without trial, contrary to our bill of rights, and that this was really intended, will not be denied. If the principles of law, and of our conſtitution, are to be but a *ſecondary* conſideration, and the obtaining, *at any rate*, what is called *Britiſh*, and *alien* property, ſhould become *the firſt*, conſiſtency will not be much attended to, or a ſtrict adherence to our bill of rights regarded. This ſuppoſition however is inadmiſſible. The delegates, no doubt, wiſh to adopt ſome rational and conſiſtent plan to benefit the public, without expoſing themſelves to the charge of having violated *their own laws*, or the law of nations. The plan adopted by the delegates, at the laſt ſeſſion, was not of this ſort, but contrary to the law of nations, our common law, and the principles of our conſtitution. When a war breaks out between two nations (*all* the ſubjects in the one, being *aliens* in the other) according to Grotius, and Rutherforth, the property belonging to the *collective body* of the guilty nation, or to the *criminal* members thereof, may by the law of nations, be confiſcated.

Now admitting (for the ſake of argument only) *all Britiſh* ſubjects to be *aliens* in this ſtate, the law of nations would not, I apprehend, authoriſe the ſeizure and confiſcation of any *Britiſh* property, other than what belongs to the *collective body*, i. e. to the king of Great-Britain, or to his repreſentatives, *as public perſons*, and to the *criminal* members of that nation, that is, to ſuch Britiſh ſubjects, who have made the injuſtice committed, by commencing and proſecuting an unjuſt war againſt us, their *own act* by their *immediate* and *direct conſent*. This I ſhall be able to prove from the authority of Rutherforth. Such of our own ſubjects, who, parricides like, have fought againſt their native country in ſupport of deſpotiſm, or done any other act, to incur the guilt of high treaſon, may be cited to appear and to take their trial, or be outlawed, if they refuſe.

That the war, on the part of Great-Britain, was in its commencement, and is in its proſecution, unjuſt, and that the Britiſh king and parliament declared the people of theſe colonies (now ſtates) in rebellion, is certainly true; but that the *legal* conſequences of ſuch a declaration, is the forfeiture of all the property of the ſubjects of this ſtates, as by the preamble to the bill, and in the meſſages is declared, I deny. The declaration itſelf is a nullity in law, and therefore no *legal* conſequences can ſpring from it. Could the declaration of the Britiſh king and parliament convert the lawful and juſtifiable reſiſtance of theſe colonies into rebellion? It certainly could not. The very ſuppoſition of a whole country being in *rebellion*, is a monſtrous abſurdity. That the Britiſh government would have abuſed their victory, and robbed and murdered under the forms of law (to judge from the conduct of their mercenaries) is highly probable; but as the depriving the colonists of their lives and property, had their reſiſtance been unſucceſsful, would not have ceaſed to be murder and lawleſs rapine; ſo the confiſcating of property, *in our power*, belonging to *unoffending* Britiſh ſubjects, *even ſuppoſing them aliens*, which I by no means admit, would ſavour too much of plunder and indiſcriminate revenge. For admitting, that the Britiſh government, in caſe of victory, would have abuſed it, as ſtated, yet the abuſe of power will never prove the right; and after all, the example would not be worthy of our imitation. The moderation with which the war has been conducted hitherto on our part, contraſted with the ſavage cruelty of our enemies, reflects on us the higheſt honour, and on them the deepeſt diſgrace; let us not therefore do any one act which may tarniſh the luſtre of our arms and the juſtice of our cauſe.

The quotations are little to the purpoſe, adduced in the laſt meſſage of the delegates, to prove that the law of nature, when applied to *collective perſons*, as moral agents, is the law of nations; that war, either civil or public, is ſolely governed by that law, except between nations which have entered into particular compacts. All this is true, and may be admitted without the leaſt prejudice to the aſſertion, "*that the property of inoffenſive Britiſh ſubjects is not liable by the law of nations, to ſeizure and confiſcation.*" It was ſcarce worth the while to write ſo much to prove, what will not be denied, that the preſent was in its origin a civil, and ſince the declaration of independence, is become a *public* or *ſolemn* war. The law of nations, thoſe maxims of humanity, and thoſe common laws of war of which Vattell ſpeaks, as cited in the meſſage, muſt, for the reaſons aſſigned by that author, apply to both kinds of war equally. What he means by the maxims of humanity and moderation in carrying on war, he explains in ſome meaſure afterwards, by ſaying, "neverthleſs war being now carried on with ſo much moderation and indulgence, ſafe-guards are allowed to houſes and lands poſſeſſed by foreigners in an enemy's country; for the ſame reaſon, he who declares war *does not confiſcate the immoveable goods poſſeſſed in his country by his enemy's ſubjects*, but the income may be ſequeſtered for hindering the remittance of it to the enemy's country. A ſovereign may confiſcate debts of his ſubjects, who may be indebted to enemies, or he may prohibit the payment while the war laſts; but at preſent, in regard to the advantage and ſafety of commerce, *all* the ſovereigns of Europe have *departed from this rigour*: and as this *cuſtom* has been *generally received*, he who ſhould act contrary to it, would *miſuſe the public faith*; for ſtrangers treated his ſubjects ſo, only from a firm perſuaſion that the *general cuſtom* would be obſerved. The ſtate does not ſo much as touch the ſums which it owes to the enemies. Every where, in caſe of war, funds credited to the public are exempt from ſeizure and confiſcation."

The advocates for the meaſure, indeed, contend that there are no *innocent* or *unoffending* Britiſh ſubjects with reſpect to us; that the *guilt* of the *whole* nation is communicated to *every individual* of it; that there being no treaties or compacts between the United States and Great-Britain, we are left to govern ourſelves entirely by the law of nations. Theſe inferences are drawn from the quotations in the meſſage, and the principles laid down, as grounded on thoſe quotations; but the premiſes (I ſpeak it with deference) will not warrant the concluſions.

The meſſage, quoting Rutherforth, ſays, there are three ways by which a nation may, in a juſt war, acquire property in the goods which it takes from the enemies; but what is pretty remarkable, it enumerates only *two* of the ways, and mentions nothing of *the third*. I ſhall therefore ſupply that defect.

"Thirdly; a nation which has committed a *crime*, may be puniſhed in the ſame manner with an individual in the liberty of nature, by being deprived of its goods. But whilſt the offending nation thus loſes its goods, the nation that takes them will acquire property in them no otherwiſe than either by being the firſt occupants, or by receiving the goods as a ranſom, by which the offending nation redeems itſelf from ſome other puniſhment. Grotius confines this way of acquiring property in war, to ſuch goods only *as belong either to the collective body of the ſtate, or to the criminal members of it.* And this reſtriction is a very proper one; for though an injury which is done by a nation, is communicated to all the members of it, as far as this injury produces an obligation to repair damages, yet the *guilt* of it, as it implies a diſpoſition to do harm, is confined to the collective perſon of the nation, and to thoſe particular members of it who have made it their *own act* by their *immediate* and *direct conſent*."

Here is a plain diſtinction ſet up by Grotius, and approved by Rutherforth, between the goods belonging to the *collective body* of the ſtate, or its repreſentative, or to the *criminal members* of it, and the goods of ſuch perſons as are *unoffending members*. As far as the injury done lays the injuring nation under an obligation to repair damages, the *injury* is communicated to *all* the members of that nation, but the *guilt*, or *criminal intention*, is confined to the *collective perſon* of the nation (in the preſent caſe to the king of *Great-Britain*, the repreſentative of the Britiſh nation) and to thoſe *particular members* of that nation (ſuppoſing them aliens) who by their *immediate* and *direct conſent*, for inſtance, by approving and egging on the war, in addreſſes

the crown, by voting for it in parliament, or by carrying it on in perſon, have made the *guilt properly their own*. That the *whole* Britiſh nation is not involved in this guilt, is evident from this circumſtance, that its firſt trading city, and if I am not miſtaken, ſome others, and a great number of individuals diſperſed throughout the iſland, have *publickly* expreſſed their diſapprobation and *abhorrence* of this war, *and of the meaſures* which led to it. If any of theſe ſhould have property in this ſtate, would it be generous, would it be juſt to confiſcate it, on the two erroneous principles *a reparation of damages, and its belonging to aliens?* The feelings of every unprejudiced man muſt revolt at the thought.

All the caſes adduced from Rutherforth, and his reaſoning on them, ſeem to apply ſolely to goods *forcibly taken* from the enemy on the high ſeas, or during inroads made into their territory, and not to goods, moveable or immoveable, which may happen to lie within the country of the injured, and be poſſeſſed by ſome of the members of the injuring nation. Even the goods taken from the enemy *by force*, are not ſtrictly the property of the captors, till a peace is concluded with the nation from the ſubjects of which they were taken; "*if they*, ſays Rutherforth, *or an equivalent for them, ſhould not be demanded, they become our own by the tacit conſent of that nation.*" Nor is this obſervation to be reſtricted to, and underſtood of ſuch goods only, taken from the enemy, as may exceed the damages ſuſtained by the injured party; for till a peace is concluded, it cannot be known whether ſatisfaction will not be made by the aggreſſor for the damages done, and conſequently it cannot be determined before that event, whether the goods taken during the war will be more than equivalent or not, to thoſe damages. Beſides, the ſuppoſition is inadmiſſible in fact, of courſe idle in theory, that the value of the goods taken from the enemy may exceed the damages and expences of the war incurred by the nation taking them, and conſequently amount to *more than an equivalent* for ſuch damages and expences. In modern wars this is never the caſe; to write therefore, and reaſon upon a thing which never does happen, is an unprofitable waſte of time and paper, to ſay the leaſt of it. The obligation on the injuring nation to repair the damages it has done, and the right the injured nation hath of doing itſelf juſtice by force of arms, in caſe this juſt ſatisfaction ſhould be denied, veſt a *temporary property* in the captors of the goods taken from the enemy withholding ſuch ſatisfaction; but this property is not *complete* and *entire*, till the real amount of the damages can be aſcertained; the expentes of the war being a part of thoſe damages, as theſe cannot be finally liquidated before the end of the war, and it cannot be known until that period, whether the enemy may not make ſome compenſation for the loſſes it hath brought on the injured nation by an unjuſt war, the captors are to be eſteemed, until peace, rather as the *precarious* poſſeſſors than the true and lawful owners of the goods taken by force, during hoſtilities; and the goods ſo taken ought to be conſidered rather as *pledges* in the hands of the captors, during the war, than as their *abſolute property*. But that the reader may judge for himſelf, I ſhall give that author's own words.

"This opinion, that *all goods* which are taken in war are not *ſtrictly our own by any law of nations*, till peace is concluded, that is, till ſome conſent, *either expreſs* or *tacit*, has made them our own by the law of nature, ſeems to the general opinion of mankind, in reſpect of *immoveable* goods; ſuch as fortified towns which have been taken, or provinces which have been overrun in war. The captors are looked upon, whilſt the war laſts, to be only in poſſeſſion of them, and though this poſſeſſion may help them to make a better bargain for themſelves in a treaty of peace than they could do otherwiſe, yet the property which they have in things of this ſort is deemed *to be precarious*, till a treaty of peace has aſcertained and eſtabliſhed it. It is uſual in treaties of peace to mention ſuch immoveable goods particularly, and the captors, if they acquire property in them, acquire it by *expreſs* conſent. We may therefore reaſonably conclude, that the property which the captors have in *all moveable goods taken in war, is likewiſe acquired in the ſame manner*. The only difference is, that immoveable goods are generally of the moſt importance, *are in the hands* of the public, and can readily be returned; whilſt *moveable* goods are of leſs conſequence, are in private hands, and becauſe they have either been conſumed, or have not been kept together, cannot be returned ſo readily. For this reaſon, whilſt the property in the former is adjuſted by *expreſs conſent*, the property in the *latter* is left to paſs from the original owners to the captors by *tacit conſent*."

The quotation from Vattell diſcovers, what is the *preſent, approved*, and *general* practice of all the civilized nations of Europe, with reſpect to moveable or immoveable *private* property, owned by the ſubjects of a ſtate at war with another ſtate. And here I cannot refrain from repeating the queſtion which was aſked by the ſenate, whether we would not wiſh to follow, in this particular, the example of the European nations, rather than that of the piratical ſtates of Barbary? The queſtion was proper and pertinent, but remains unanſwered.

It may be ſaid, indeed, that there is no compact or treaty between theſe ſtates and Great-Britain, and therefore we are left to govern ourſelves ſolely by the law of nations. To judge from the paſſage cited from Vattell, there does not appear to be any treaty by which the above deſcribed property is ſecured to individuals among the ſeveral nations of Europe; ſuch individuals owe the preſervation of ſuch property to the uſage or cuſtom merely of thoſe nations, and not to any particular or ſpecial treaty; *a cuſtom* which does them honour, and is more conformable to the genuine ſpirit of the law of nations, than that rigour which is inſiſted on by the delegates. If we are to govern ourſelves ſolely by the rigour of that law in one inſtance, why not in all? this, at leaſt, would be acting conſiſtently; and were we to act up to the ſuppoſed rigour of that law in all caſes, to preſerve conſiſtency, we muſt make ſlaves of the Britiſh priſoners of war: For Rutherforth obſerves, "the law of nature will allow thoſe who are priſoners to be made ſlaves by the nation which takes them," by way of reparation for damages done; "In Europe, indeed, priſoners of war are not ſlaves, but their ſlavery is prevented by the law of each particular nation, and not by any law which all the nations of Europe have agreed to eſtabliſh among themſelves as the common rule of their conduct towards one another. The civil law of each particular nation does not allow of ſlavery." But the civil law of all, or of moſt of theſe United States, allows of ſlavery, and therefore, if we act up to this miſconceived rigour of the law of nations, and in conformity to the ſubtle reaſoning, founded on a reparation of damages, ſo much relied on by the delegates, we may make ſlaves of the Britiſh priſoners of war. The right, however, has been prudently waved; becauſe the exerciſe of it would lead to thoſe horrors and cruelties, ſo juſtly condemned by reaſon and humanity. It would neither be ſafe or honourable to this ſtate to be inſtrumental in renewing ſome of thoſe dreadful ſcenes which diſgrace the times of Marius and Sylla; confiſcations were a part of their cruel ſyſtem; I hope they never will be a part of ours, in the extent contended for by the delegates. A confiſcation of Britiſh property, on their principles, if followed by no other bad conſequences, would probably diffuſe through the Britiſh nation a greater rancour, and a much more general ſpirit for continuing the war, than what at preſent appears to prevail in it.

But what Britiſh ſubjects are to be deemed, *upon legal principles, aliens* in this ſtate? Theſe are not yet aſcertained, tho' aſcertained they muſt be, before we can poſſibly ſeize and confiſcate the property of ſuch, upon the foundation of its belonging to *aliens*, and *alien enemies*. Is the acceptance of a penſion from the king of Great-Britain, the not coming into this, or ſome one of the United States, before a particular day, and not remaining in ſome one of thoſe ſtates, from that time, to the preſent, to render the penſioners, and the perſons not coming over, and reſiding as aforeſaid, *Britiſh ſubjects, and alien enemies?* If ſo, they would be puniſhed for the want of foreſight; for ſurely the deprivation, of a natural, and valuable privilege, is a ſevere puniſhment. Is the departure from this ſtate on or ſince a certain day, the 14th of Auguſt 1775, for inſtance, when there was no law declaring ſuch a departure unlawful, to make the perſons, ſo departing, *Britiſh ſubjects* and *aliens?* A law declaring them ſo, would be retroſpective, and conſequently, contrary to our bill of rights: and without ſuch a law, the individuals laſt mentioned, could not be deemed Britiſh ſubjects, and aliens; they have not been deemed ſuch hitherto, becauſe there is a ſubſiſting law, conſidering them as our own ſubjects, and tribly taxing ſome of them, as *ſuch*. The abſentees from this ſtate, who have taken up arms againſt us, or done any other act, to ſubject themſelves to our treaſon law, may be dealt with, in the manner already pointed out, and their property, ſhould they be found guilty on tryal, or be outlawed, will be confiſcated to the uſe of the ſtate. More than this; 'tis apprehended, has not been done by any ſtate in the union, notwithſtanding the poſitive aſſertion to the contrary by the delegates. No confiſcation of *Britiſh* property, as *ſuch*, has. I believe, taken place in any of theſe ſtates; what property has been confiſcated belonged to the diſaffected refugees, who were conſidered as *traitors* to their country; but the bill for confiſcating Britiſh property, within this ſtate, rejected by the ſenate, confiſcated that property, on the principle of its belonging to *Britiſh ſubjects, and aliens*, and not as the property of *traitors*. If mere reſidence in the enemy's country, or any one of the above recited incidents or predicaments, is to conſtitute the reſidents *Britiſh ſubjects*, and alien enemies, what court is to try the perſons guilty of, or falling under, any of thoſe predicaments? What time is to be allowed, and what evidence admitted, for the proof of the offence and eſtabliſhment of the facts? As we were formerly all one people, born under the ſame allegiance, due to one and the ſame ſovereign, and capable of acquiring and holding property in every part of the Britiſh dominions, if mere reſidence in the enemy's country is to conſtitute the reſidents *Britiſh ſubjects* and *alien enemies*, it ſeems but reaſonable, that this ſtate ſhould have iſſued a proclamation, ordering all, who might have property within it, or chuſing to become members of it, to repair hither by a fixed day, allowing a reaſonable time, and announcing the conſequences of not complying with the ſummons. As no ſuch proclamation was iſſued, to paſs a law, declaring the perſons under any of the predicaments already mentioned, *Britiſh ſubjects* and *alien enemies*, and in ſo doing to ſtrip them of the birthright of natural born ſubjects, is not conſonant to the principles either of natural or common law. All Britiſh ſubjects, born before the declaration of independence in any part of the Britiſh dominions, are *natural born ſubjects*, and conſequently cannot be *aliens to each other*, and cannot be diveſted, by act of aſſembly, of that natural, inherent, and indelible character. "For tho' it be ſaid (ſee 2d Ventries 6) that an act of parliament may do any thing, that muſt be underſtood as to civil things, which are but the creatures of men, therefore may be altered, and diſpoſed of, at the will of the ſupreme authority: but natural things are not within its power, for an act of parliament cannot make a man to be born in any other place than where he was really born;" and conſequently cannot make a man ceaſe to be a natural born ſubject who really is one; but a natural born ſubject cannot be an alien, therefore an act of aſſembly cannot make an alien. The meſſages, indeed, of the delegates, and the preamble to the rejected bill aſſert, that by the declaration of independence, *all Britiſh ſubjects* became *aliens* in this ſtate, and the Britiſh nation being at war with us, *alien enemies*, and *therefore* incapable of holding any property within this ſtate. Although I have but little knowledge of the law, yet will I venture to pronounce, the delegates have in this point miſtaken the law. While the duchies of Normandy, Guienne, Anjou, and Britain, were under the actual obedience of the kings of England, perſons born within thoſe duchies, according to lord Coke, (ſee Calvin's caſe) "could inherit within the realm of England, *as well as Engliſhmen*, becauſe, ſays that great lawyer, *they were under the allegiance, due to one ſovereign.*" It was determined in the ſame caſe, that the ante-nati in Scotland, that is, perſons born there before the acceſſion of king James the firſt to the crown of England, remained aliens as to the crown of England, becauſe, as my lord Coke obſerves, "they were born when there were *ſeveral kings* of the *ſeveral* kingdoms, and the uniting of the kingdoms by deſcent ſubſequent, cannot make him a ſubject to that crown to which he was an alien at the time of his birth; ſo albeit, the kingdoms (England and Scotland) ſhould by deſcent be *divided* and governed by ſeveral kings, yet it was reſolved, *that all thoſe, that were born under one natural obedience, while the realms were united under one ſovereign, ſhould remain natural born ſubjects, and no aliens; for that naturalization due and veſted by birth-right, cannot by any ſeparation of the crowns afterwards, be taken away; nor be, that was by judgment of law a natural ſubject, at the time of his birth, become an alien by ſuch matter ex poſt facto.*"

Whenever therefore, a kingdom, commonwealth, or an empire, comes to be divided into two, or more ſeparate and independent ſtates (whether the ſeparation be made by the deſcent of the crown to different perſons, or by a civil and public war, as in our caſe, is immaterial) I ſhould apprehend the ſame law ought to obtain; for where there is the ſame reaſon, there the law ſhould be the ſame. Wherefore, as both the Britiſh and Americans, born before the declaration of independence took place, *were under one allegiance, due to the ſame ſovereign*, none of *thoſe* can be conſidered *as aliens*, either in Great-Britain, or in this ſtate, but may inherit within the ſeveral countries as the natural born ſubjects of both, and may ſue in the reſpective courts of either, to recover their debts, lands and tene-

ments, if any of these should be unjustly withheld from them; but *all* born in any part of the dominions under the actual obedience of the British king, and *all* born in any of these United States, since that declaration, are *aliens* in the respective nations; the former are aliens in these states, the latter aliens in the British dominions.

If the foregoing authorities are rightly applied, if the principles I have laid down are just, and the inferences I have drawn from them conclusive, it follows, that upon common law principles, the property acquired by *individual British subjects*, born before the declaration of independence, cannot be forfeited *as belonging to aliens*, the persons born before that event *not being aliens*, as has been proved from the greatest law authority; that *public* British property, *i. e.* property belonging to the British crown, may, both by the common law, and law of nations, be confiscated; and that by the latter law (supposing *all British* subjects *aliens*) not only *public* property, but also the property of the *criminal* members of the British nation, may be confiscated.

Having examined into the natural justice, and legality of seizing, confiscating, and applying British property, I shall, in my next number, treat of the policy of confiscating, and applying that property, and, I flatter myself, I shall be able to prove, that the confiscation and appropriation thereof would be bad policy.

January 28, 1780. A SENATOR.

CHARLES-TOWN, *(South Carolina) November* 17.

We have now here no less than seven of his Most Christian Majesty's ships, under the command of Mr. Durumain, the gallant officer who lately with a very small force, and without loss, effected the conquest of the valuable island of St. Vincent; so that, should the enemy think proper to revisit us this winter, we shall have little to fear from them, only exerting our own strength and our neighbours doing their duty. His excellency count d'Estaing, commander in chief of the French naval and land force in America co-operating with the forces of the United States, having accomplished one of the purposes he came upon (which was, that if he should find it impracticable to recover the state of Georgia out of the enemy's hands, *during the hurricane season*, at least to leave us such aid as his next intended operations would admit, is gone upon another expedition, which occasions a variety of conjectures.

The Iphigenie frigate is ruturned from a cruise, having looked into Savannah river. In a day or two she is to sail upon another.

Last Monday assurances were received here of the pacific disposition of the Creek nation of Indians, with advice, that their headmen were going to meet the Spaniards at St. Mark's where barracks (bomb proof) capable of containing 3000 men, had been built; and that the Spaniards were in actual possession of Pensacola. One of the Indians who brought the intelligence declares, that he saw the British garrison marched out, and the Spanish centinels take post.

FISH-KILL, *January* 27.

We learn that captain Lockwood, last week, with a few continental troops, and some militia, made an excursion to Morrissania, ten miles from the city of New-York, and surprised and took twenty prisoners of Bearmore's corps, among whom was their new advanced partizan colonel Hatfield—They were in Mrs. Morris's house, and refused to surrender until it was set on fire; 'tis said the major and four others were consumed in the flames. We also learn that some of the militia, though ordered off by capt. Lockwood, were too tardy, and by their delay, about 40 of them were taken by the enemy's light-horse.

It is with pleasure we inform our readers, that our army, at head-quarters, are plentifully supplied with all kind of provisions.

PHILADELPHIA *Jan.* 29.

On the morning of the 15th inst. major Lee detached, from Burlington, 40 men, under the command of captain Patten, in sleighs, who, before next morning, were along-side the guard-ship, laying froze in the ice near Sandy-Hook; but finding that the ice for several yards round her, was cut, so that they could not board her, they retired to a small distance unperceived, where they surprised two schooners and 1 sloop, made the men prisoners, burnt the vessels, and then returned without the least loss, bringing with them the prisoners, and what plunder they thought proper.

Feb. 2. By various accounts from Charles-Town, we hear that the Spaniards have invested St. Augustine; that general Prevost, with his whole army, had left Georgia, to aid that place, but his assistance came too late; that Pensacola had submitted to the Spanish arms: and that the winter had been so severe in South Carolina, that there had been ice near an inch thick.

ANNAPOLIS, *February* 11.

By his EXCELLENCY
THOMAS SIM LEE, Esquire,
GOVERNOR of MARYLAND.

A PROCLAMATION.

WHEREAS the house of senate stands adjourned to the twenty-ninth day of March next, and the house of delegates to the first day of the same month, and affairs of importance requiring the consideration of the general assembly as soon as well may be; I have thought proper, that the general assembly of this state should meet on the second day of March next, and do therefore, in virtue of the power with which I am invested by the constitution and form of government, hereby appoint the said second day of March for the meeting and holding the general assembly, of which the several sheriffs of this state are hereby enjoined to give public and due notice.

Given at Annapolis, this third day of February, in the year of our lord one thousand seven hundred and eighty.

THO. SIM LEE.

By his EXCELLENCY's command,
T. JOHNSON, junior, sec.

GOD SAVE THE STATE.

On the 27th ult. congress resolved, "That all issues of articles in the department of commissary-general of issues, made in pursuance of a resolution of congress, of the second of October, 1777, be discontinued."

A memorial having been read in congress, from lieutenant Christopher Hele, of the British navy, praying to be exchanged, and to have leave to go to New-York, upon his parole, for a few days, to procure a person in his room, that assembly resolved, "that Mr. Hele be informed, that the prayer of his memorial cannot be granted until captain Cunningham is released; as it has been determined that he must abide the fate of that officer."

*** *Owing to the destruction of the printing-office by fire, on the morning of the 4th instant, the printers were prevented from publishing a paper on that day. They return their sincere thanks to their fellow-citizens for their assistance on that unhappy occasion, and in a particular manner to those, whose exertions preserved their goods, and rescued their dwelling house from the flames.*

ALL persons having any demands against me as deputy quarter-master-general, either for monies due or that will become due by the first of March, are requested to send in their accounts with all possible dispatch, in order for settlement; on receipt of which, the balances will either be paid or certificates given for what shall appear to be due to the first of March, to which time I am directed by the quarter-master-general to furnish all accounts in my district without fail.

H. H. [illegible]SWORTH,
D. Q. M. G. E. shore, St. Maryland.

1

TAKEN from on board a pilot boat, which drove on shore on the 23d day of December, between Little and Great Choptank, sundry articles, as sails, cordage, butter, &c. with a chest some distance from her, having in it mens and womens apparel; the chief of her lading is tobacco, which cannot be saved. The owner or owners of said boat are desired to come and prove their property, and pay the subscribers salvage agreeable to law and custom in such cases.

THOMAS LINTHICUM,
ABRAHAM LEE,
JOHN LEE.

w3 1 20 Dollars

TAKEN up as a stray by Joseph Wilson, living near the court-house in Montgomery county, Maryland, a small bay MARE, about twelve and a half hands high, ten or eleven years old, branded on the off buttock something like V, had a bell on her, and was shod before when she came. The said mare was sold by the subscriber in March, 1778, to a certain Charles Pritchett, who has since swapt her away. The owner is desired to prove property, pay charges, and take her away.

JOSEPH WILSON.

1 20 Dollars

NOTICE is hereby given, that by an act of assembly made and passed at a session of assembly of the state of Maryland, begun and held at the city of Annapolis, on the 8th day of November, 1779, the bills of credit, dated January 1, 1767, emitted and made current by an act of assembly, passed November session, 1766, are directed to be brought in and deposited with the western shore treasurer, on or before the first of June next, or thereafter irredeemable; for which the holders of said bills of credit may, at their option, receive either bills of exchange drawn on the trustees of said state at London, or state loan-office certificates, bearing an annual interest of six per cent. But if the bills of exchange, or any of them, to be drawn in virtue of said act, shall not be paid, the same shall be renewable, but neither the drawer, or any endorser thereof, shall be answerable for, or liable to pay, any damages thereon, other than the charges of protest.

9

N. B. The printers in the adjacent states are requested to insert the above in their respective papers.

ONE HUNDRED DOLLARS REWARD.
January 6, 1780.

RAN away from the subscriber's plantation, about seven miles from Annapolis, on the main road leading from thence to Baltimore, on Monday the 21st day of December last, a likely young NEGRO man, named TOM, about five feet eight inches high, a stout well set fellow with thick lips, and his legs rather large: had on when he went away, a light coloured country made cloth jacket, with a red short waistcoat under it, a pair of light coloured country cloth breeches, and also took with him a pair of leather breeches, dark coloured yarn stockings, and two pair of shoes. It is apprehended that he may have endeavoured to get over into Virginia, from whence he was brought when a small boy and was then the property of John Morton Jordan, Esq; deceased. Whoever will apprehend the said negro, and bring him to the subscriber, shall receive the above reward if taken in Maryland, and if out of Maryland a further reward of one hundred dollars, besides all reasonable charges, paid by

5 ELIZABETH SCOTT.

FIFTY POUNDS REWARD.
Head of Severn, Jan. 17, 1780.

STOLEN from the subscriber, on Thursday morning the 13th instant, a coat, jacket and breeches, a pair of mittens, a comb, an ax, some powder in an osnabrig bag, and shot in a leather one. They were stolen by one PATRICK RILEY, an Irishman, about 5 feet 10 inches high, has yellow hair, a dark brown country cloth coat and breeches, and a whitish jacket, the breeches have a hole torn in the thigh; he has a cast in his eyes, a full red face, and very large limbs. He has a pass, which mentions his having had one from the governor of Virginia, which he lost, and that he is a deserter from the British army; he had with him a white bitch, with yellow spots, short ears and tail. Whoever will secure the said Riley so that he be brought to justice, shall receive one hundred dollars if taken in the county, and if out of the county the above reward, paid by

row 3 JOHN M'COY.

A PETITION will be offered to the first session of the general assembly after this notice shall have been published eight weeks; for an act admitting to record, and giving effect from the date to a deed executed in Prince-George's county, by George Conn to Josias Shaw, for part of a tract of land called William and Anne.

w8 7 RICHARD HENDERSON.

A PETITION will be offered to the first session of the general assembly after this notice shall have been published eight weeks, for an act admitting to record and giving effect from the date to a deed executed in Prince-George's county, by Mary Athey to John Webster, for part of a tract of land called Athey's Choice.

w8 2 JOHN WEBSTER.

In COUNCIL, Annapolis, Dec. 17, 1779.

ANY gentlemen having vessels to let on freight to Europe or the West-Indies, and willing to treat with the Governor and Council, are requested to transmit their [illegible] as speedily as convenient.

T. J[illegible]SON, jun. cl.

77

☞ CASH given for clean Linen and Cotton RAGS. ☜

ANNAPOLIS: Printed by FREDERICK and SAMUEL GREEN, at the POST-OFFICE in *Charles-Street*.